

**BEFORE THE TENNESSEE STATE BOARD OF EQUALIZATION**

IN RE:            Bulab Realty of Tennessee, Inc.            )  
                    Ward 041, Block 018, Parcel 00005C        ) Shelby County  
                    Commercial Property                        )  
                    Tax Years 2005, 2006 & 2007                   )

**INITIAL DECISION AND ORDER**

**Statement of the Case**

The subject property is presently valued as follows:

<u>LAND VALUE</u>	<u>IMPROVEMENT VALUE</u>	<u>TOTAL VALUE</u>	<u>ASSESSMENT</u>
\$340,900	\$7,610,500	\$7,951,400	\$3,180,560

An appeal has been filed on behalf of the property owner with the State Board of Equalization. The undersigned administrative judge conducted a hearing in this matter on January 10, 2008 in Memphis, Tennessee. The taxpayer was represented by Andrew H. Raines, Esq. The assessor of property was represented by John Zelinka, Esq.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Subject property consists of a 15.41 acre site improved with a single tenant, three story office building and supporting industrial facilities located at 1256 N. McLean Blvd. in Memphis, Tennessee. The office building was constructed between 1979 and 1997 and the industrial facilities were constructed between 1940 and 1970. Subject office building totals approximately 150,000 square feet. The supporting industrial facilities total approximately 55,100 square feet.

Of the 150,000 square feet in the office building, approximately 48,010 square feet consists of class B office space. Approximately 14,250 square feet located on the third floor is in shell condition. The office building contains approximately 39,790 square feet of space devoted to laboratory use. The laboratory space is similar to the office space and in some cases has shared plumbing. There are no enclosed laboratory areas or "clean rooms." The remaining square footage (approximately 28,050 square feet) is devoted to a variety of uses such as an auditorium, technology infrastructure/support, library/research center, maintenance, equipment and secure storage (vault).

The approximately 55,100 square feet of industrial facilities consists of the following areas:

<u>Area</u>	<u>Square Footage</u>
Quality Control Labs	6,500
Manufacturing Offices	8,500
Plant 1	18,700



<u>Area</u>	<u>Square Footage</u>
Semi-Plant	2,300
Shop	5,800
Compressor Building	1,400
Shredding	3,000
Supervisor Office	1,700
Plant 4F	7,200
Total	55,100

The industrial facilities are used for the manufacturing of specialty chemicals.

The taxpayer contended that subject property should be valued at \$4,000,000. In support of this position, the testimony and appraisal report of Todd Glidewell, MAI was offered into evidence. Mr. Glidewell utilized the cost and sales comparison approaches in his analysis and concluded they supported value indications of \$4,300,000 and \$3,950,000 respectively. Mr. Glidewell correlated the indicated values at \$4,000,000 or \$19.50 per square foot in his reconciliation.

Mr. Glidewell did not use the income approach in his appraisal report. The rationale for not employing the income approach was explained at page 109 of his report as follows:

Due to submarket rental rates and occupancy levels, coupled with the expenses for the subject, the anticipated risk to produce net operating income suitable to investor purchasers is greater than market norms. **Exclusion of the Income Approach does not provide a less credible value conclusion. This appraisal does not develop the income approach because of minimal probability that an investor would develop or purchase a similar office and industrial facility on a speculative basis.**

[Emphasis in Original]

As will be discussed below, one of the primary differences between Mr. Glidewell and the assessor's witness, staff appraiser Larry Cargile, concerned external obsolescence. Mr. Glidewell maintained that subject office building suffers a significant loss in value due to the relative lack of office sales and leasing activity within the subject market area. Mr. Glidewell concluded that subject office building experienced a negative variance in net operating income of \$8.51 per square foot resulting in external obsolescence equal to \$5,197,566.

The assessor contended that subject property should be valued at \$7,428,135. In support of this position, the testimony and written analysis of staff appraiser Larry Cargile was offered into evidence.

Mr. Cargile argued that subject property constitutes a special purpose property for two reasons. First, Mr. Cargile asserted that no market exists for subject property aside from the sale of the company as a whole. Second, subject office building was designed for, and continues to be utilized by, a single tenant in the manufacture of specialty chemicals.



Given his opinion that subject property constitutes a special purpose property, Mr. Cargile valued subject property by the cost approach. Mr. Cargile initially valued subject property at \$9,202,800 (exhibit #4). However, after conceding on cross-examination that he had erroneously included in his cost approach improvements on another parcel, Mr. Cargile prepared a revised cost approach with a concluded value of \$7,852,000 (exhibit #5).

The basis of valuation as stated in Tennessee Code Annotated Section 67-5-601(a) is that "[t]he value of all property shall be ascertained from the evidence of its sound, intrinsic and immediate value, for purposes of sale between a willing seller and a willing buyer without consideration of speculative values . . ."

General appraisal principles require that the market, cost and income approaches to value be used whenever possible. Appraisal Institute, *The Appraisal of Real Estate* at 50 and 62. (12th ed. 2001). However, certain approaches to value may be more meaningful than others with respect to a specific type of property and such is noted in the correlation of value indicators to determine the final value estimate. The value indicators must be judged in three categories: (1) the amount and reliability of the data collected in each approach; (2) the inherent strengths and weaknesses of each approach; and (3) the relevance of each approach to the subject of the appraisal. *Id.* at 597-603.

The value to be determined in the present case is market value. A generally accepted definition of market value for ad valorem tax purposes is that it is the most probable price expressed in terms of money that a property would bring if exposed for sale in the open market in an arm's length transaction between a willing seller and a willing buyer, both of whom are knowledgeable concerning all the uses to which it is adapted and for which it is capable of being used. *Id.* at 21-22.

General appraisal principles require that the market, cost and income approaches to value be used whenever possible. Appraisal Institute, *The Appraisal of Real Estate* at 50 and 62. (12th ed. 2001). However, certain approaches to value may be more meaningful than others with respect to a specific type of property and such is noted in the correlation of value indicators to determine the final value estimate. The value indicators must be judged in three categories: (1) the amount and reliability of the data collected in each approach; (2) the inherent strengths and weaknesses of each approach; and (3) the relevance of each approach to the subject of the appraisal. *Id.* at 597-603.

After having reviewed all the evidence in the case, the administrative judge finds that the subject property should be valued at \$6,481,000.

The administrative judge finds that Mr. Glidewell's appraisal report should initially receive greatest weight. As will be discussed below, however, the administrative judge finds that the proof warrants certain modification to Mr. Glidewell's appraisal.



The administrative judge wants to stress that Mr. Cargile has appeared before him on numerous occasions over the years and has always been a most competent appraiser. In this case, however, the administrative judge finds that Mr. Cargile's analysis lacked credibility because of his lack of familiarity with subject property. In particular, Mr. Cargile testified that he last "walked through the entire property" in 1997.<sup>1</sup> Moreover, Mr. Cargile did not realize until cross-examination that his initial analysis included improvements located on another parcel. Presumably, Mr. Cargile would have realized this on his own had he been sufficiently familiar with subject property.

Respectfully, the administrative judge finds Mr. Cargile was not sufficiently familiar with subject property to conclude that it constitutes a special purpose property. The administrative judge finds that Mr. Cargile's analysis was similar to that rejected by the administrative judge in *Teledyne Telemetry* (Marshall County, Tax Year 2007).<sup>2</sup> That decision is appended to this order and hereby incorporated by reference in relevant part. Like the appraiser in that appeal, Mr. Cargile did not prepare a highest and best use analysis. Moreover, Mr. Glidewell much more persuasively testified that areas such as the laboratory space could "fairly readily" be converted to other uses.

Although the administrative judge finds that Mr. Glidewell's appraisal should initially receive greatest weight, the administrative judge finds two significant modifications in order. First, the administrative judge finds that the cost approach should be adopted as the basis of valuation process. Second, the administrative judge finds that the deduction for external obsolescence should be reduced from \$5,197,566 to \$3,022,140.

The administrative judge finds that subject property is somewhat unique given the associated industrial facilities and lack of demand in the submarket for office space. Although the administrative judge finds that such considerations standing alone do not support a special-purpose classification, the administrative judge does find that the lack of true comparables and speculative nature of many of the adjustments significantly reduces the reliability of the sales comparison approach.

With respect to the cost approach, the administrative judge finds it inconsistent for Mr. Glidewell to omit the income approach from his analysis and then for all practical purposes utilize an income approach to calculate rent loss in quantifying external obsolescence. The administrative judge finds that Mr. Glidewell's estimate of external obsolescence must be considered unduly speculative and excessive.

Although the administrative judge finds that Mr. Glidewell's 34.4% estimate of external obsolescence must be deemed excessive, the administrative judge finds Mr. Cargile's refusal to recognize external obsolescence must also be rejected. The

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<sup>1</sup> Mr. Cargile also testified that he had driven by the subject property approximately one month ago.

<sup>2</sup> That decision has been appealed to the Assessment Appeals Commission.



administrative judge finds that the preponderance of the evidence supports adoption of a 20% deduction for external obsolescence. This results in an indicated value of \$6,481,000 after rounding.

ORDER

It is therefore ORDERED that the following value and assessment be adopted for tax years 2005, 2006 and 2007:

<u>LAND VALUE</u>	<u>IMPROVEMENT VALUE</u>	<u>TOTAL VALUE</u>	<u>ASSESSMENT</u>
\$300,000	\$6,181,000	\$6,481,000	\$2,592,400


It is FURTHER ORDERED that any applicable hearing costs be assessed pursuant to Tenn. Code Ann. § 67-5-1501(d) and State Board of Equalization Rule 0600-1-.17.

Pursuant to the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-301—325, Tenn. Code Ann. § 67-5-1501, and the Rules of Contested Case Procedure of the State Board of Equalization, the parties are advised of the following remedies:

1. A party may appeal this decision and order to the Assessment Appeals Commission pursuant to Tenn. Code Ann. § 67-5-1501 and Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization. Tennessee Code Annotated § 67-5-1501(c) provides that an appeal **“must be filed within thirty (30) days from the date the initial decision is sent.”** Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization provides that the appeal be filed with the Executive Secretary of the State Board and that the appeal **“identify the allegedly erroneous finding(s) of fact and/or conclusion(s) of law in the initial order”**; or
2. A party may petition for reconsideration of this decision and order pursuant to Tenn. Code Ann. § 4-5-317 within fifteen (15) days of the entry of the order. The petition for reconsideration must state the specific grounds upon which relief is requested. The filing of a petition for reconsideration is not a prerequisite for seeking administrative or judicial review; or
3. A party may petition for a stay of effectiveness of this decision and order pursuant to Tenn. Code Ann. § 4-5-316 within seven (7) days of the entry of the order.

This order does not become final until an official certificate is issued by the Assessment Appeals Commission. Official certificates are normally issued seventy-five (75) days after the entry of the initial decision and order if no party has appealed.

ENTERED this 20th day of February, 2008.

  
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MARK J. MINSKY  
ADMINISTRATIVE JUDGE  
TENNESSEE DEPARTMENT OF STATE  
ADMINISTRATIVE PROCEDURES DIVISION

c: Andrew H. Raines, Esq.  
Tameaka Stanton-Riley, Appeals Manager



BEFORE THE TENNESSEE STATE BOARD OF EQUALIZATION

<sup>1</sup> According to Mr. Hoch, the manufacturing process requires a temperature of  $72^{\circ} \pm 5^{\circ}$  and a humidity level of 50%  $\pm$  20%.

The basis of valuation as stated in Tennessee Code Annotated Section 67-5-601(a) is that "[t]he value of all property shall be ascertained from the evidence of its sound, intrinsic and immediate value, for purposes of sale between a willing seller and a willing buyer without consideration of speculative values . . ."

After having reviewed all the evidence in the case, the administrative judge finds that the subject property should remain valued at \$3,227,300 based upon the presumption of correctness attaching to the decision of the Marshall County Board of Equalization. As will be discussed below, the administrative judge finds that neither party introduced sufficient evidence to establish subject property's fair market value as of January 1, 2007, the relevant assessment date pursuant to Tenn. Code Ann. § 67-5-504(a).

Since the taxpayer is appealing from the determination of the Marshall County Board of Equalization, the burden of proof is on the taxpayer. See *State Board of Equalization Rule 0600-1-.11(1)* and *Big Fork Mining Company v. Tennessee Water Quality Control Board*, 620 S.W.2d 515 (Tenn. App. 1981).

Respectfully, the administrative judge finds that Mr. Burks' sales comparison approach cannot provide a basis of valuation for two reasons. First, the cost approach was not even addressed.<sup>2</sup> Second, the administrative judge finds that the three comparable sales given greatest weight by Mr. Burks cannot provide a reliable basis of valuation standing alone.

The administrative judge finds that Mr. Burks placed greatest weight on comparable sales #1, 2 and 7. The administrative judge finds that sale #7 occurred approximately ten (10) months after the assessment date and must be deemed irrelevant. See *Acme Boot Company and Ashland City Industrial Corporation* (Cheatham County - Tax Year 1989) wherein the Assessment Appeals Commission ruled that "[e]vents occurring after [the assessment] date are not relevant unless offered for the limited purpose of showing that assumptions reasonably made on or before the assessment date have been borne out by subsequent events." Final Decision and Order at 3. The administrative judge finds that sale #1 contains less than one-half (1/2) of subject property's square footage. The administrative judge finds that sale #2 standing by itself, or even in conjunction with sale #1, does not constitute the minimum evidence necessary to reliably establish the market value of subject property. Moreover, the various adjustments summarized in the adjustment grid were not derived from market data. As noted in one authoritative text:

<sup>2</sup> The administrative judge recognizes that the sales comparison approach might very well have greatest probative in many instances and be accorded decisive weight in the reconciliation process. However, the administrative judge finds that the cost approach should have been addressed, especially considering the significant differences between the subject and comparables.



Sales adjustment processes require a sufficient number of sales from which to extract the adjustments. Often there may not be enough sales to provide a basis for all adjustment calculations. The appraiser should recognize and explain in the appraisal report that a lack of supporting data may either reduce the validity of the adjustments made or eliminate the possibility of applying any direct sales adjustment process. . . .

Appraisal Institute, *The Appraisal of Real Estate* at 426-27 (12<sup>th</sup> ed. 2001).

As previously stated, the administrative judge finds that the current appraisal of subject property should be affirmed based upon the presumption of correctness attaching to the decision of the Marshall County Board of Equalization. The administrative judge unequivocally rejects Mr. Hoch's assertion that subject facility constitutes a special-purpose property and should therefore be valued in use rather than in exchange.

The issue of value in use versus value in exchange has its genesis in a discussion of these concepts found at page AP-8 of the State of Tennessee Assessment Manual (1972) which provides in pertinent part as follows:

If a property is of a highly special design or use, and is of the type not commonly bought or sold in the market, then the objective concept of value prevails and other methods of estimating value must be formulated. Under a situation of this nature, the property is useful to the present owner and is of a functional design for its particular use. However, it may have little, if any, utility to buyers ordinarily forming the real estate market. Consequently, the property is said to have a value in use as opposed to value in exchange. The value of such special purpose property is generally estimated on the basis of depreciated replacement cost.

The administrative judge finds that a special-purpose property is typically defined as "[a] limited-market property with a unique physical design, special construction materials, or a layout that restricts its utility to the use for which it was built. . . ." Appraisal Institute, *The Dictionary of Real Estate* at 272 (4<sup>th</sup> ed. 2002). See also Appraisal Institute, *The Appraisal of Real Estate* at 24-26 (12<sup>th</sup> ed. 2001). As explained in the same textbook:

Although most buildings can be converted to other uses, the conversion of special-purpose buildings generally involves extra expense and design expertise. Special-purpose structures include:

- Houses of worship
- Theaters
- Sports arenas

*Id.* at 262.

The administrative judge finds that part of the confusion in the present appeal stems from terminology. The administrative judge finds that Mr. Hoch relied on an article by Max J. Derbes, Jr., MAI which divided manufacturing plants into three basic types: general-



purpose, special-purpose and single-purpose.<sup>3</sup> As summarized at page 30 of Mr. Hoch's report, "[s]pecial-purpose industrial facilities serve a special-purpose, although they can be converted for alternate use." In contrast, "[s]ingle-purpose improvements, such as a concrete batching plant or a refinery, exist for one purpose." The administrative judge finds that the term "special-purpose" property as used in the State of Tennessee Assessment Manual is analogous to what Mr. Derbes terms a "single-purpose improvement".

The administrative judge finds that subject property cannot be deemed a special-purpose property based upon the evidence in the record. The administrative judge finds that Mr. Hoch did not prepare a highest and best use analysis which seemingly constitutes the starting point in determining whether a particular facility comprises a special-purpose property. Similarly, in response to the administrative judge's query, Mr. Hoch testified that he was unsure what the cost would be to convert the subject to an alternate use.

The administrative judge finds Mr. Hoch seemingly placed great emphasis on the fact subject property was originally constructed for its current use. The administrative judge finds that most manufacturing facilities are constructed for a specific manufacturing process. The administrative judge finds that a manufacturing facility cannot be considered a special-purpose property simply because it was constructed for a specific manufacturing process and continues to be used for its original purpose.

The administrative judge finds Mr. Hoch essentially testified subject property should be classified as special-purpose because of (1) the quality of the interior finish; (2) the manufacturing process; (3) the high percentage of office space; and (4) the fact much of the facility is temperature and humidity controlled.

Respectfully, the administrative judge finds that subject property does not have a unique physical design, special construction materials, or a layout that restricts its use to manufacturing circuit boards. The administrative judge finds that the only "special" or unusual feature about the building is that it has an additional boiler to control the temperature and humidity in portions of the plant. The administrative judge finds that although this feature may not be needed by a potential buyer of subject property, it in no way precludes alternative uses. The administrative judge finds that many manufacturing facilities converted to alternative uses have superadequacies.

The administrative judge finds that Mr. Hoch's comparable sales have no probative value insofar as a value in use appraisal is concerned. The administrative judge finds that none of the sales concerned facilities that manufacture circuit boards. Presumably, only sales of circuit board manufacturers should be considered if subject facility constitutes a special-purpose property.

<sup>3</sup> Derbes, Max J. Jr., M.M., *Non-Comparable Industrial Sales*, Appraisal Journal at 40 (January 2002).



The administrative judge finds it appropriate to briefly observe that adoption of Mr. Hoch's approach would result in a fundamental change in how industrial facilities are appraised in Tennessee for ad valorem tax purposes. Indeed, the administrative judge has had numerous occasions over the years to hear appeals involving much more "specialized" properties that neither the assessors of property nor Division appraisers argued should be classified as special-purpose and valued in use.

#### ORDER

It is therefore ORDERED that the following value and assessment be adopted for tax year 2007:

<u>LAND VALUE</u>	<u>IMPROVEMENT VALUE</u>	<u>TOTAL VALUE</u>	<u>ASSESSMENT</u>
\$240,600	\$2,986,700	\$3,227,300	\$1,290,920

It is FURTHER ORDERED that any applicable hearing costs be assessed pursuant to Tenn. Code Ann. § 67-5-1501(d) and State Board of Equalization Rule 0600-1-.17.


Pursuant to the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-301 - 325, Tenn. Code Ann. § 67-5-1501, and the Rules of Contested Case Procedure of the State Board of Equalization, the parties are advised of the following remedies:

1. A party may appeal this decision and order to the Assessment Appeals Commission pursuant to Tenn. Code Ann. § 67-5-1501 and Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization. Tennessee Code Annotated § 67-5-1501(c) provides that an appeal "must be filed within thirty (30) days from the date the initial decision is sent." Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization provides that the appeal be filed with the Executive Secretary of the State Board and that the appeal "identify the allegedly erroneous finding(s) of fact and/or conclusion(s) of law in the initial order"; or
2. A party may petition for reconsideration of this decision and order pursuant to Tenn. Code Ann. § 4-5-317 within fifteen (15) days of the entry of the order. The petition for reconsideration must state the specific grounds upon which relief is requested. The filing of a petition for reconsideration is not a prerequisite for seeking administrative or judicial review; or
3. A party may petition for a stay of effectiveness of this decision and order pursuant to Tenn. Code Ann. § 4-5-316 within seven (7) days of the entry of the order.

This order does not become final until an official certificate is issued by the Assessment Appeals Commission. Official certificates are normally issued seventy-five (75) days after the entry of the initial decision and order if no party has appealed.



ENTERED this 13th day of December, 2007.

  
MARK J. MINSKY  
ADMINISTRATIVE JUDGE  
TENNESSEE DEPARTMENT OF STATE  
ADMINISTRATIVE PROCEDURES DIVISION

c: Mr. Larry W. Burks  
Linda Haislip, Assessor of Property